

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OXFORD BIOMEDICAL RESEARCH, INC.,
a Michigan corporation,

Plaintiff,

Case No. 05-60274

v.

Hon. John Corbett O'Meara

INVITROGEN CORPORATION,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION**

Before the court is Defendant's motion for reconsideration, filed April 28, 2009.

Pursuant to L.R. 7.1(g)(2), no response was ordered and no oral argument was held.

Defendant seeks reconsideration of the court's April 23, 2009 order denying Defendant's motion to compel compliance with Local Rule 16.2. Specifically, Defendant asserts that Plaintiff did not properly plead its claim regarding the term of the contract at issue in this case.

The standard for granting motions for reconsideration is as follows:

Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration which merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant shall not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.

LR 7.1(g)(3).

Defendant contends that the court was mistaken when it ruled that "the issues that Defendant complains are 'new' were litigated by the parties through cross-motions for summary

judgment.” April 23, 2009 Order at 1. Defendant is correct that the term of the contract was not litigated at the summary judgment stage. The order also provided, however, that the “court believes that Plaintiff’s complaint is sufficient to give Defendant notice of its claims.” Id.

Further, the court emphasizes that Defendant was aware that the length of the contract term was an issue in this case, at the latest, as of July 26, 2007. See Def.’s Ex. 2. As a result, Defendant cannot reasonably claim that it will suffer unfair prejudice if this issue is litigated at trial. Under these circumstances, the court would permit amendment under Fed. R. Civ. P. 15(b)(1) if requested.

For these reasons, the court finds that Defendant has not demonstrated a “palpable defect” in the court’s April 23 order, the correction of which would result in a different disposition of the case. Defendant’s motion for reconsideration is DENIED.

SO ORDERED.

s/John Corbett O’Meara
United States District Judge

Date: May 8, 2009

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, May 8, 2009, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager